IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 2538 of 2006(B)

PETITIONER:

K.VIJAYAKUMARAN NAIR, "SREESAILAM",
MELONCODE, VALIYARA, VELLANAD P.O.
THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE POONTHOTTAM.

RESPONDENTS:

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1. **THE DISTRICT COLLECTOR,**
   THIRUVANANTHAPURAM.

2. **THE TAHSILDAR, NEDUMANGAD.**

3. **THE EXECUTIVE ENGINEER (ROADS),**
   PWD. P.M.G.JUNCTION, THIRUVANANTHAPURAM.

4. **THE SUPERINTENDENT OF POLICE (RURAL),**
   KURAVANKONAM, THIRUVANANTHAPURAM.

5. **THE DIVISIONAL OFFICER,**
   FIRE & RESCUE SERVICE DEPARTMENT,
   THIRUVANANTHAPURAM.

6. **THE HINDUSTAN PETROLEUM CORPORATION,**
   REPRESENTED BY THE SENIOR MANAGER,
   TATAPURAM ROAD, ERNAKULAM.

7. **THE SENIOR MANAGER (SALES),**
   HINDUSTAN PETROLEUM CORPORATION,
   INNU APPARTMENTS, KURAVANKONAM,
   KAWDIAR P.O. THIRUVANANTHAPURAM.

W.P.(C). NO.2538/2006:

8. SHEEJA KUMARI, B.V.NIVAS,
VELLANAD, THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.V.GIRI,
SRI.A.M.SHAFFIQUE,
SRI.E.K.NANDAKUMAR,
SRI.A.K.JAYASANKAR NAMBIAR,
GOVERNMENT PLEADER SRI. BENJAMIN PAUL.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.2538/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE LETTER GIVEN TO THE PETITIONER DTD. 03/08/05.

EXT.P.2: COPY OF THE LETTER DTD. 27/06/2005 GIVEN TO THE DISTRICT COLLECTOR, TRIVANDRUM.

EXT.P.3: COPY OF THE NOC NO. A17.48543/05 DTD. 22/10/2005.

EXT.P.4: COPY OF THE RECOMMENDED PRACTICE FOR LOCATION AND LAY OUT OF ROADSIDE MOTOR FUEL FILLING AND MOTOR FUEL FILLING CUM SERVICE STATIONS PUBLISHED BY IRC.

EXT.P.5: COPY OF THE LETTER NO. RW/NH-33023/19/99-DO-III DTD. 25/09/2003.

RESPONDENT'S EXHIBITS:

EXT.R6.A: COPY OF THE NOTIFICATION DTD. 25/11/2003.

EXT.R6.B: COPY OF THE LETTER OF INTENT DTD. 29/06/2005.

EXT.R6.C: COPY OF THE NO OBJECTION CERTIFICATE DTD. 15/05/2006 OBTAINED FROM THE DISTRICT COLLECTOR, THIRUVANANTHAPURAM.

EXT.R6.D: COPY OF THE NO-OBJECTION CERTIFICATE DTD. 02/06/2006 ISSUED BY THE APPROPRIATE AUTHORITY UNDER THE EXPLOSIVE ACT.

EXT.R8.A: COPY OF THE NOTIFICATION ISSUED BY HINDUSTAN PETROLEUM CORPORATION DT. 25/11/2003 IN MALAYALA MANORAMA DAILY.

EXT.R8.B: COPY OF THE COMMUNICATION SENT BY THE SENIOR REGIONAL MANAGER OF HINDUSTAN PETROLEUM CORPORATION DTD. 13/07/2004.

EXT.R8.C: COPY OF THE LETTER OF INTENT ISSUED BY THE HINDUSTAN PETROLEUM CORPORATION DTD. 29/06/2005.

EXT.R8.D: COPY OF THE APPLICATION OF THE HINDUSTAN PETROLEUM CORPORATION WITH RELEVANT DOCUMENT DTD. 06/10/2005.

W.P.(C). NO.2538/2006:

EXT.R8.E: COPY OF THE REPORT SUBMITTED BY THE TAHSILDAR TO DISTRICT COLLECTOR DT. 11/11/2005 ALONG WITH CHECK LIST AND PROFORMA REPORT FOR GRANTING EXPLOSIVE LICENSES IN FORM 23 AND 24, SKETCH AND THANDAPER ACCOUNT OF THE LAND.

EXT.R8.F: COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE EXECUTIVE ENGINEER, PWD DTD. 06/01/2006.

EXT.R8.G: COPY OF THE NOTIFICATION ISSUED BY THE BHARATH PETROLEUM CORPORATION DTD. 07/05/2005.

EXT.R8.H: COPY OF THE NORMS FOR THE ACCESS OF FUEL STATIONS, SERVICE STATIONS AND REST AREAS ALONG NATIONAL HIGHWAYS ISSUED BY THE MINISTRY OF ROAD TRANSPORT AND HIGHWAYS.

//TRUE COPY//

prv.

S. SIRI JAGAN, J.

WP(C) NO. 2538 OF 2006 - B

Dated this the 16th day of July, 2007

J U D G M E N T

The petitioner has filed this writ petition alleging that respondents 6 to 8 have established a petroleum outlet in a property part of which is a puramboke land. The petitioner therefore seeks the following reliefs:-

> "i. Issue a writ in the nature of mandamus directing respondents 1 to 5 not to ignore the requirements provided in Exts.P4 and P5 while granting the NOC pursuant to the requisition of respondents 6 and 7 for opening a new outlet at Vellanad in Thiruvananthapuram District.
>
> ii. Issue a writ of mandamus directing respondents 6 and 7 to follow the norms provided in Exts.P4 and P5 before proceeding further with the work leading to the opening of a retain outlet at Vellanad in the land offered by the 8th respondent at Vellanad village of Thiruvananthapuram District.
>
> iii. Issue a writ declaring that the revenue and PWD officials are obliged to take further action for the removal of the unauthorized construction in the puramboku land by respondents 6 to 8 and inaction in this regard would

constitute failure to perform their duties as public servants.

iv) Issue a writ in the nature of mandamus directing respondents 1 to 4 to take all effective action for the removal of unauthorized construction by respondents 6 to 8 in the puramboku land as found on measurement of the area by the revenue and PWD authorities.

v. Issue such other order or direction, as this Court may deem fit and proper in the interest of justice."

2. Respondents 1 to 4 have filed a counter affidavit in which it has been stated that after issuing No Objection Certificate for establishment of petroleum outlet, the third respondent noticed that there is encroachment into the road puramboke by the eighth respondent while constructing the outlet. It is further stated in the counter affidavit that on receipt of information about the encroachment, a stop memo has been issued to the eighth respondent and a notice to demolish the unauthorised structures also has been issued to the eighth respondent. The Tahsildar has already conducted an enquiry and the boundaries were

demarcated and it was found that there was clear encroachment into road puramboke during construction by the eighth respondent. It is stated in the counter affidavit that in spite of notice issued by the third respondent, the eighth respondent has not taken steps to vacate the encroached portion.

3. In the above circumstances, respondents 2 and 3 are directed to complete the proceedings initiated by them as stated in the counter affidavit of respondents 1 to 4 as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment. Further contentions of the petitioner in the writ petition are left open. The proceedings shall be in accordance with the Kerala Land Conservancy Act and Rules.

The writ petition is disposed of as above.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007